

The Timing of Elections

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There are nearly half a million elected officials in American local governments, and the timing of their elections varies enormously both across states and even within the same state. Some local elections are held simultaneously with major federal and state races, while others are held at times when no higher level elections coincide. This Article argues that the timing of local elections drives turnout and, ultimately, substantive policymaking. When local elections do not coincide with important federal or state contests, the marginal cost to voters of participating rises, and consequently only those voters with the greatest stake in the electoral outcome turn out, a phenomenon we label “selective participation.” Selective participation is especially pronounced in local special-purpose elections, such as those for school and special districts, where single-issue interest groups are especially influential. When there is selective participation in a low turnout election, policy outcomes will be more favorable to special interests than they would be if the same government were elected in a high turnout election. To explore these ideas empirically, we examine a natural experiment created by a 1980s change in the California Election Code, which gave school boards the option of changing their elections from off-cycle to on-cycle. Against this backdrop, we consider alternative legal regimes for regulating the timing of local government elections.

INTRODUCTION

Elections are the primary means by which the will of the people affects the behavior of the government in a democracy. Through elections, voters select good candidates and reward and punish incumbent politicians for their performance in office, acts that form the cornerstone of democratic accountability. The quality of this electoral connection between popular will and government performance depends on a host of factors, ranging from voter mobilization and electoral administration to legislative procedures and party competition. Political scientists have long studied how demographic and socioeconomic factors, as well as party and candidate mobilization efforts, influence the decisions of individual voters to participate in the political process.¹ Meanwhile, political scientists, lawyers, and economists have

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¹ The related literature is voluminous. See, for example, Warren E. Miller and J. Merrill Shanks, *The New American Voter* 39–114 (Harvard 1996) (presenting and analyzing data regarding the correlations among voter turnout and variables such as race, age, educational attainment, and income level); Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation, and*

analyzed how electoral rules and processes influence the performance of political institutions.² Yet, amid this vast sea of scholarship, the topic of election timing is a nearly deserted island.³ Despite the enormous variation in the timing of elections within the United States, relatively little is known about the ways in which *when* an election is held affects who votes, who is elected, and ultimately which public policies are enacted. These are the questions we explore in this Article. We argue that even seemingly mundane institutional choices, such as whether an election is held on a Tuesday in November or a Wednesday in April, can have a profound impact on the nature of political participation and the influence of special interest groups.

The timing of elections for federal offices is, of course, tightly regulated and does not vary outside the primary setting in any meaningful way from state to state. Both scholars and politicians have long understood that electoral behavior in off-years—years without presidential elections—differs from participation during years with presidential elections, but this has sensibly been the starting and stopping point in the federal context.⁴ Most elections in the United States, however, are not federal elections, but state and local government elections. There are more than 500,000 elected officials in the United States, and fewer than 600 of them are federal officials.⁵

The timing of local government elections can only be described as chaotic. In some localities, all or virtually all elections are held on the same day and placed on the same ballot. Many local political institutions hold elections simultaneously with other state or federal elections. Others, however, do not coordinate at all or seemingly take active steps in favor of fragmentation. For example, in some localities, there is at least one local government election in eleven months of the

Democracy in America 74–210 (Macmillan 1993) (considering the relationships among political participation and factors such as education level, gender, race, language, and mobilization by political leaders, by electoral campaigns, or around issues).

² There is no shortage of canonical cites on this front, but for an example, see generally Douglas W. Rae, *The Political Consequences of Electoral Laws* (Yale 1967).

³ For a notable exception, see Zoltan L. Hajnal, Paul G. Lewis, and Hugh Louch, *Municipal Elections in California: Turnout, Timing, and Competition* 35–38 (Public Policy Institute of California 2002) (concluding, based on a study of municipal elections, that election timing accounts for half of the variation in registered voter turnout among California cities).

⁴ From time to time, proposals to make the federal election day a national holiday or to change election day to a weekend surface, but these proposals seem to have relatively little traction historically.

⁵ Christopher R. Berry and Jacob E. Gersen, *Fiscal Consequences of Electoral Institutions*, 52 J L & Econ 469, 475 table 1 (2009). See also US Census Bureau, *1992 Census of Governments: Popularly Elected Officials* v–vi, online at http://www.census.gov/prod/2/gov/gc/gc92_1_2.pdf (visited Oct 21, 2009).

year.⁶ The legal regimes that regulate electoral timing are equally diverse. Sometimes the precise dates for all local government elections are specified by state statute. Elsewhere, electoral timing is discretionary, set partially or entirely by the local government institution subject to the election. The result is a patchwork of local government election practices, many of which change substantially from year to year. The primary question for this Article is how such institutional variation affects electoral politics.

The structure of our argument is roughly as follows. We begin with the empirical observation that the timing of local government elections varies enormously within the United States. Given this institutional heterogeneity, a natural next question is whether electoral timing matters. Unsurprisingly, we suggest it does. Empirically, temporally fragmented elections—those occurring at odd times during the year or during years in which there is no major November election—produce systematically lower voter turnout.⁷

For reasons developed in Part II, we argue that the reduction in turnout is unlikely to be randomly distributed across the pool of potential voters. Elections held at odd times force potential voters to bear additional costs to participate in the political process. As these costs increase, voters with less at stake in the election will be more likely to abstain and voters with more at stake in the election will comprise a larger share of the active electorate, a phenomenon we label *selective participation*. When the costs of participation rise, elections that might otherwise have been dominated by majoritarian interests may turn into elections dominated by special interests, resulting in concrete differences in public policy.⁸ Importantly, we use the term “minoritarian” or “special interest” descriptively rather than normatively. Electoral dominance by special interest groups may result in undesirable policies that benefit a minority by imposing costs or harms on a majority, but special interests may also have better information and more intense preferences about policy than the general public. Whether policy is better or worse when elections are dominated by special interest voters is an empirical question, one that we pur-

⁶ Thomas R. Souzzi, *Special District Election Date Study: A Crazy Quilt* *2–3 (Office of Nassau County Executive, 2007), online at <http://www.nyslocalgov.org/pdf/Suozzi2.pdf> (visited Oct 20, 2009) (assembling local government election dates in Nassau County, New York).

⁷ For evidence on this point, see Hajnal, Lewis, and Louch, *Municipal Elections in California* at 36 figure 3.2 (cited in note 3). For a review of the relevant literature, see Christopher R. Berry, *Imperfect Union: Representation and Taxation in Multilevel Governments* 51–88 (Cambridge 2009).

⁸ We offer an informal description of this phenomenon below, but one of us has elsewhere formalized a theory of selective participation and interest group politics. See Berry, *Imperfect Union* at 52–69 (cited in note 7).

sue here and in other ongoing work. If our account of electoral timing, selective participation, and special interest influence is correct, then voter turnout should drop dramatically in oddly timed elections and minoritarian interests should tend to dominate. Both of these effects are evident empirically. Against this backdrop, the Article surveys some of the legal regimes that regulate electoral timing in the United States and clarifies the normative considerations attendant in choosing an election timing regime.

I. BACKGROUND AND LITERATURE

The timing of elections connotes several areas of existing scholarship that are not the subject of this Article. First, the frequency of elections or, equivalently, the duration for which a selected politician is able to stay in office without reelection may affect government accountability and the legitimacy of public policy.⁹ Prior scholarship has, for example, argued that the greater the time in office between elections, the greater the agency problem in politics.¹⁰ Political theory work on the normative properties of election timing follows similar themes.¹¹ Related, in the redistricting context, the timing of redistricting measures can ameliorate or exacerbate potential political pathologies¹² and more generally, judicial conceptions of voting rights hinge on assumptions about the temporal nature of political participation rights.¹³

A second literature concerns the timing of called elections in parliamentary systems. Unlike presidential regimes in which electoral timing is set *ex ante*, the timing of elections in parliamentary schemes is generally explicitly endogenous.¹⁴ Prior scholarship emphasizes how

⁹ See Eric Maskin and Jean Tirole, *The Politician and the Judge: Accountability in Government*, 94 *Am Econ Rev* 1034, 1035 (2004).

¹⁰ See Timothy Hellwig and David Samuels, *Electoral Accountability and the Variety of Democratic Regimes*, 38 *Brit J Polit Sci* 65, 69 (2008); G. Bingham Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* 51 (Yale 2000) (arguing that the ability of voters to not reelect incumbents is essential to retaining policymakers who are responsive to what citizens want).

¹¹ Dennis F. Thompson, *Election Time: Normative Implications of the Temporal Properties of the Electoral Process in the United States*, 98 *Am Polit Sci Rev* 51, 51 (2004) (arguing that legitimacy of electoral outcomes depends critically on the role of time in electoral cycles).

¹² See Adam B. Cox, *Designing Redistricting Institutions*, 5 *Elec L J* 412, 418–21 (2006) (discussing how delayed implementation of redistricting could provide a check on manipulation of voting districts for partisan ends).

¹³ Adam B. Cox, *The Temporal Dimension of Voting Rights*, 93 *Va L Rev* 361, 363–64 (2007) (arguing that courts should acknowledge the temporal dimension of voting rights, which would allow a voting plan that harms particular voters in one election to be justified by benefits to those same voters in later elections).

¹⁴ See Alastair Smith, *Election Timing in Majoritarian Parliaments*, 33 *Brit J Polit Sci* 397, 399–405 (2003); Kaare Strøm and Stephen M. Swindle, *Strategic Parliamentary Dissolution*, 96

the ability to call or refuse to call elections in a parliamentary system affects the distribution of coalitional power.¹⁵ Various scholars have sought to understand when elections are called in parliamentary regimes, citing such factors as information asymmetry,¹⁶ exogenous shocks, and public opinion.¹⁷ An important theme of this literature is that elections should be and apparently are called strategically so as to affect the chances of electoral victories.¹⁸ Nevertheless, the ability of politicians to call elections at any point within an electoral cycle makes this literature an imperfect match for electoral timing regimes in US local government, where elections are held at fixed, regular intervals.

Third, the timing of local government elections is closely related to ballot length. If local elections are not held concurrently with state or national elections, ballots on any given election day will be shorter. Thus, electoral timing is related to the political science literature on ballot rolloff and voter fatigue.¹⁹ Longer ballots tend to result in some rolloff or, put differently, an increase in abstention for issues further down the ballot. We return to this issue in Part IV.B.

Am Polit Sci Rev 575, 584–88 (2002); Arthur Lupia and Kaare Strøm, *Coalition Termination and the Strategic Timing of Parliamentary Elections*, 89 Am Polit Sci Rev 648, 659 (1995).

¹⁵ Smith, 33 Brit J Polit Sci at 399–401 (cited in note 14) (demonstrating, through anecdotal evidence, that calling early elections can negatively impact the controlling party's performance in the election); Strøm and Swindle, 96 Am Polit Sci Rev at 584–88 (cited in note 14); Lupia and Strøm, 89 Am Polit Sci Rev at 655–57 (cited in note 14).

¹⁶ See, for example, Smith, 33 Brit J Polit Sci at 411–17 (cited in note 14) (showing that parliamentary governments can exploit foreknowledge of economic conditions to their advantage while scheduling elections).

¹⁷ See, for example, id at 399–400 (examining Margaret Thatcher's decision to call elections following the conclusion of the Falklands War and arguing that it was based on estimations of public opinion); Lupia and Strøm, 89 Am Polit Sci Rev at 659 (cited in note 14).

¹⁸ Consider Gary King, et al, *A Unified Model of Cabinet Dissolution in Parliamentary Democracies*, 34 Am J Polit Sci 846, 860–68 (1990); Bernard Grofman, *The Comparative Analysis of Coalition Formation and Duration: Distinguishing Between-County and Within-Country Effects*, 19 Brit J Polit Sci 291, 292–300 (1989) (examining the effect that different cabinet structures and party systems have on cabinet durability).

¹⁹ See, for example, Martin P. Wattenberg, Ian McAllister, and Anthony Salvanto, *How Voting Is Like Taking an SAT Test: An Analysis of American Voter Rolloff*, 28 Am Polit Q 234, 247–48 (2000) (concluding that voters skip ballot questions about which they lack information and that ballot rolloff will only increase with the trend toward including more issues per ballot). For analyses of how other aspects of ballots influence elections, see Bernard Grofman and Arend Lijphart, *Electoral Laws and Their Political Consequences* 245–46 (Agathon 1986) (summarizing studies that have demonstrated how a favorable position on the ballot can increase the number of votes a candidate receives); J.E. Mueller, *Choosing among 133 Candidates*, 34 Pub Opinion Q 395, 399–401 (1970) (examining voter cues in an election with an unusually large slate of relatively undifferentiated candidates and no incumbents); H.M. Bain and D.S. Hecock, *Ballot Position and Voter's Choice: The Arrangement of Names on the Ballot and Its Effect on the Voter* 88 (Wayne State 1957) (finding that voters tend to arbitrarily favor candidates who are listed first on a ballot, those who are listed immediately after the first candidate, and sometimes those who are listed last).

Finally, the problem of electoral timing naturally relates to the broader voter turnout literature. This literature is expansive, but for current purposes, a few fixed points are worth special note. To start with, one of many findings in Wolfinger and Rosenstone's classic book on voting is that turnout in years without a presidential election is significantly lower than turnout in years with a presidential election.²⁰ Similarly, voting patterns in local government elections²¹ generally and education-related elections²² specifically are a common object of study. Turnout is systematically lower in local elections than in federal elections.²³ Turnout is lower in special district local elections than in elections for general purpose government office (for example, mayor or city council).²⁴ And, turnout is lower when elections do not piggyback on general elections for higher office.²⁵ Particularly relevant is work by Dunne, Reed, and Wilbanks, who argue that manipulation of electoral rules can sometimes allow politicians to select the median voter in a given election.²⁶ They find that school bond measures are more likely

²⁰ Raymond E. Wolfinger and Steven J. Rosenstone, *Who Votes?* 8 (Yale 1980).

²¹ For an example of early emphasis on local government in the literature, see Arthur J. Alexander and Gail V. Bass, *Schools, Taxes, and Voter Behavior: An Analysis of School District Property Tax Elections* 19–49 (Rand 1974); Phillip K. Piele and John S. Hall, *Budgets, Bonds, and Bailouts: Voting Behavior in School Financial Elections* 31–53 (Heath 1973); Alvin Boskoff and Harmon Zeigler, *Voting Patterns in a Local Election* 70–71 (Lippincott 1964).

²² See, for example, Christopher R. Berry and William G. Howell, *Accountability and Local Elections: Rethinking Retrospective Voting*, 69 J Polit 844, 852–54 (2007); Daniel L. Rubinfeld and Randall Thomas, *On the Economics of Voter Turnout in Local School Elections*, 35 Pub Choice 315, 322–26 (1980) (evaluating to what extent economic variables can reliably predict voter turnout in local school district elections); Daniel L. Rubinfeld, *Voting in a Local School Election: A Micro Analysis*, 59 Rev Econ & Stat 30, 40 (1977) (noting that participation in school elections correlates with factors indicating self-interest, such as the number of children currently in school).

²³ Hajnal, Lewis, and Louch, *Municipal Elections in California* at 2 (cited in note 3); Albert K. Karnig and B. Oliver Walter, *Decline in Municipal Voter Turnout: A Function of Changing Structure*, 11 Am Polit Q 491, 491–92 (1983).

²⁴ Souzzi, *Special District Election Date Study* at *2 (cited in note 6) (noting that turnout reached as low as 3 percent in four Nassau County, New York sanitation district elections in 2002); Donald F. Stetzer, *Special Districts*, in James R. Grossman, et al, eds, *The Encyclopedia of Chicago* 774, 776 (Chicago 2004) (noting that in Chicago turnout for special district elections is lower than for municipal elections); Nancy Burns, *The Formation of American Local Governments: Private Values in Public Institutions* 12 (Oxford 1994).

²⁵ See Harvey J. Tucker, *Low Voter Turnout and American Democracy* *2 (unpublished workshop paper, European Consortium for Political Research, 2004), online at <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/uppsala/ws9/tucker.pdf> (visited Dec 27, 2009); Zoltan L. Hajnal and Paul G. Lewis, *Municipal Institutions and Voter Turnout in Local Elections*, 38 Urban Aff Rev 645, 656 (2003); Hajnal, Lewis, and Louch, *Municipal Elections in California* at 18 (cited in note 3); Arthur J. Townley, Dwight P. Sweeney, and June H. Schmieder, *School Board Elections: A Study of Citizen Voting Patterns*, 29 Urban Educ 50, 59 (1994) (noting a dramatic increase in voter participation for several Riverside County, California school district elections after a change to coordinate with local general elections).

²⁶ Stephanie Dunne, W. Robert Reed, and James Wilbanks, *Endogenizing the Median Voter: Public Choice Goes to School*, 93 Pub Choice 99, 114–15 (1997) (concluding that the power to

to pass when turnout is low and that turnout is influenced by the timing of the bond election.²⁷ This Article builds on their work.

II. THEORY

The ability to exclude parties or candidates from ballots, to regulate who may vote, and to determine the way in which those votes are tallied are standard tools for influencing the outcomes of democratic elections.²⁸ Indeed, the ability to control who votes in an election is nearly the ability to choose who wins an election. In recent years, politicians, courts, and commentators have canvassed the ins and outs of redistricting as a tool of political control. The working (although contested) presumption of the redistricting literature is that political actors making use of increasingly powerful computer software and models of political participation can draw districts that all but ensure the winners and losers of districted elections.²⁹ We have little interest in wading into the redistricting debates, much less resolving them in this Article. Note, however, that political manipulation of redistricting seeks to control electoral outcomes by explicitly regulating which voters may vote in which elections. Put crudely, a redistricting scheme affects the likely median voter in an election by deciding who is permitted and who is not permitted to vote in a given district. In essence, it imposes an infinite participation cost on voters outside the district.

Rather than regulate the pool of eligible voters, as redistricting does, many other political institutions and electoral rules affect political participation in a different way: they alter the probability that an *eligible* voter will turn into an *actual* voter. Changing the costs of electoral participation accomplishes indirectly what redistricting seeks to accomplish directly: changing the median voter in an election to favor a preferred outcome.³⁰

select election dates is a useful tool for voter demographic manipulation). See also Tucker, *Low Voter Turnout* at *9–11 (cited in note 25) (noting that a set of particularly controversial Texas constitutional amendments passed, in part, due to strategic placement of an election at a time chosen to minimize turnout). See generally Marc Meredith, *The Strategic Timing of Direct Democracy*, 21 *Econ & Polit* 159 (2009) (suggesting that supporters of ballot initiatives may strategically time when these initiatives are brought to a vote because of a relationship between the timing of a statewide election and the demographics of the likely voters).

²⁷ Dunne, Reed, and Wilbanks, 93 *Pub Choice* at 104–11 (cited in note 26).

²⁸ Samuel Issacharoff, Pamela S. Karlen, and Richard H. Pildes, eds, *The Law of Democracy: Legal Structure of the Political Process* 867–981 (Foundation 2007).

²⁹ But see Nathaniel Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116 *Harv L Rev* 649, 663–64, 668–69 (2002) (arguing that redistricting is unlikely to result in bipartisan gerrymanders because most districts are not politically lopsided on a consistent basis).

³⁰ See Dunne, Reed, and Wilbanks, 93 *Pub Choice* at 114–15 (cited in note 26).

Poll taxes are an explicit, if objectionable, example, but virtually every feature of an electoral regime affects participation costs. At a minimum, voters must bear the costs of going to and from the polls; some will invest in information acquisition to learn something about the potential candidates or issues, and so on.³¹ Without opening up the black box of individual decisions to vote, we note that for a given participation cost structure, there will generally be some citizens who are indifferent between voting and not voting. For this group of citizens, the benefits of voting are exactly equal to the costs of political participation. As participation costs increase, these voters will stop participating and as a result, the median voter in the group of actual voters will change. Similarly, as participation costs decrease, some citizens who were unwilling to bear the costs of voting previously may choose to participate, again changing the identity of the median actual voter in the election. The simple point is that the observed or actual median voter is endogenous to the political participation cost structure.³²

Importantly, the voters who continue to participate in elections as the costs of doing so increase will be those with the most at stake in the election. These voters are special interest voters in the sense that they care more than the general population about the outcome of the given election. We refer to this dynamic as a “selective participation effect.” Actual participation is a selective function of voter interest (potential gains or losses from the electoral outcome). Not only will turnout drop as participation costs rise, but the substantive political preferences of actual voters are likely to diverge from the political preferences of nonvoters in the jurisdiction.

This dynamic may be a bit opaque with respect to, say, a presidential election where information about candidates is widespread. But many local government elections are less well publicized and often even topically quite limited: they select officials for sewer, water, or school districts.³³ As it becomes more costly to participate in sewer district elections, it will be citizens with some special interest in these outcomes who will participate, for example the employees of the district or new residents seeking an extension of sewer lines. Although this Article focuses on shifting participation costs generated by the timing of elections, virtually every facet of an electoral scheme affects participation costs and generates potential selective participation effects. Electoral

³¹ But see Arthur Lupia and Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* 4, 17 (Cambridge 1998) (arguing that while most voters generally lack information about politics, this lack of information will not necessarily lead them to make unreasoned decisions).

³² Dunne, Reed, and Wilbanks, 93 Pub Choice at 100 (cited in note 26).

³³ See Berry and Howell, 69 J Polit at 846 (cited in note 22).

timing, then, is one element of this broader set of regulatory tools that may change the preference distribution of actual voters.

To illustrate, consider three common electoral timing schemes found in local government elections. In the first, all local elections are held on the same day on the same ballot. In the second, elections for different offices are scattered throughout the year on different days. In the third, elections are coordinated within a year on the same day, but some elections are held in different years, including off-cycle without higher level state or federal elections. It is not clear which of these timing regimes is optimal *a priori*, but each generates different participation costs structures. The citizen who wishes to vote for all local government offices must go to the polls on only one day in the first regime, perhaps on dozens of days in the second regime, and at least once per year in the third regime. A voter who would not go to the polls to vote in a single sewer district election might nevertheless vote in that election if she is already at the polls to vote in the mayoral or presidential election. If these differences are significant, seemingly modest features of electoral institutions may alter the outcomes of elections and the policies chosen by elected officials.³⁴

To be clear at the outset, we emphasize that we are not making normative claims about the social desirability of alternative election timing regimes or the policies that are likely to result from them. When participation is costly only the voters who care most intensely about the issue at stake will turn out. By definition, these are “special interests.” On the one hand, special interests may use their electoral influence to secure particularistic benefits for themselves at the cost of nonvoters. On the other hand, special interests are likely to be precisely those voters with the most information and the greatest expertise regarding the issue at stake, and their participation may result in better candidates being elected, ultimately leading to better public policy. Which of these two effects dominates in any given case is an empirical question.

This basic tradeoff—namely that delegating to those with expertise may generate better decisions but also gives the expert some latitude to exploit the principal—is a very general problem and a core element of literature on mechanism design.³⁵ For example, a very similar problem is familiar to scholars of the US Congress, where the ra-

³⁴ For a formal theory of these dynamics, see Berry, *Imperfect Union* at 52–69 (cited in note 7).

³⁵ For a discussion, see Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green, *Microeconomic Theory* 857–925 (Oxford 1995) (discussing the mechanism design problem, which concerns the elicitation of individual preferences and the constraints that limit social decisions in responding to these preferences).

tionale for the delegation of authority to committees has been a matter of longstanding controversy.³⁶ Delegating some policymaking authority to specialized committees may be an efficient way for the chamber to generate informed policies, but committees may also use their informational advantages strategically to benefit their members rather than the chamber.³⁷ The choice of election timing, with its implications for selective participation, is another instance of this rather general problem.

If all this sounds obviously true, it should not. The selective participation account suggests that manipulating the timing of elections (or other political institutions) should alter the position of the realized median voter and therefore affect substantive policy decisions in government. However, there are robust literatures suggesting that this institutional variation should have no impact whatsoever on observed policy. Consider a general version of the Tiebout model.³⁸ If citizens are mobile, jurisdictions that enact policy different from the preferences of citizens will suffer an exodus of residents and capital. If local governments compete with each other for an increased tax base, then the right bundle of public goods, taxes, and spending should be provided in each jurisdiction.³⁹ If this theory is correct, then institutional variation like electoral timing should be largely irrelevant for determining policy. Voting with one's feet makes voting at the ballot box superfluous, implying that different electoral timing regimes should not be systematically associated with different policy outcomes in a perfectly competitive local government market.

³⁶ For a review of the debate, see generally Kenneth A. Shepsle and Barry R. Weingast, *Positive Theories of Congressional Institutions*, 19 *Legis Stud Q* 149 (1994).

³⁷ See Keith Krehbiel, *Information and Legislative Organization* 68 (Michigan 1991); Thomas W. Gilligan and Keith Krehbiel, *Collective Decisionmaking and Standing Committees: An Informational Rationale for Restrictive Amendment Procedures*, 3 *J L, Econ, & Org* 287, 288–89 (1987).

³⁸ See Carlo Perroni and Kimberly A. Scharf, *Tiebout with Politics: Capital Tax Competition and Constitutional Choices*, 68 *Rev Econ Stud* 133, 150 (2001) (arguing that intergovernmental competition over tax policy constrains the fiscal choices of the median voter); Phillip Sprunger and John D. Wilson, *Imperfectly Mobile Households and Durable Local Public Goods: Does the Capitalization Mechanism Work?*, 44 *J Urban Econ* 468, 487–88 (1998) (exploring models of governmental competition where transaction costs pose a significant barrier to voter relocation); Michael Rauscher, *Leviathan and Competition among Jurisdictions: The Case of Benefit Taxation*, 44 *J Urban Econ* 59, 66 (1998); Susan Rose-Ackerman, *Tiebout Models and the Competitive Ideal: An Essay on the Political Economy of Local Government*, in John M. Quigley, ed., *Perspectives on Local Public Finance and Public Policy* 23, 25–36 (JAI 1983); John C. Sonstelie and Paul R. Portney, *Profit Maximizing Communities and the Theory of Local Public Expenditure*, 5 *J Urban Econ* 263, 276–77 (1978). For a general review of the literature, see, for example, Sprunger and Wilson, 44 *J Urban Econ* at 485–87.

³⁹ But see, for example, Dennis Epple and Allan Zelenitz, *The Implications of Competition among Jurisdictions: Does Tiebout Need Politics?*, 89 *J Polit Econ* 1197, 1216 (1981) (arguing that Tiebout competition alone is insufficient to constrain government excesses).

Similarly, if the preferences of voters (participants) in elections are fairly representative of nonvoters in a jurisdiction, then the extent of turnout should matter relatively little either for electoral outcomes or for the resulting public policy. The idea that participants in political processes will reasonably approximate the preferences of nonparticipants has a longstanding pedigree in political science.⁴⁰ The selective participation thesis suggests otherwise, but there are sensible theoretical reasons to expect that electoral timing simply will not matter.

III. EVIDENCE

To make some headway on these issues we investigate the effect of election timing on voter turnout in municipal and school board elections and then discuss some preliminary results from an analysis of the effect of election timing on substantive policy outcomes. Although the empirical results are discussed here using mainly summary figures and simple statistics, all of the conclusions have been established using more sophisticated econometric models in a companion paper.⁴¹

We focus our analysis on local government elections in California for two reasons. First, there is a rich archive of electoral data available from the Center for California Studies at Sacramento State University. As explained below, this archive enables us to analyze thousands of local elections spanning 1996 through 2006. In most other states, by contrast, election data are maintained at the local level and must be collected on a cumbersome county-by-county basis.⁴²

The second and, in our view, more important reason for analyzing California is that hundreds of local governments in the state have changed the timing of their elections within recent memory. According to a statewide survey, more than 40 percent of responding cities made a change in the timing of their municipal elections in recent years.⁴³ An important impetus for the change in city elections appears to have

⁴⁰ See, for example, Patrick Ellcessor and Jan E. Leighley, *Voters, Non-voters and Minority Representation*, in Charles E. Menifield, ed, *Representation of Minority Groups in the U.S.: Implications for the Twenty-first Century* 127, 142 (Austin & Winfield 2001); Benjamin Highton and Raymond E. Wolfinger, *The Political Implications of Higher Turnout*, 31 *Brit J Polit Sci* 179, 183 (2001); Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* 167–68 (Harvard 1995) (noting that while demographic differences exist between voters and nonvoters, the substantive disagreements between the two groups tend to be small).

⁴¹ See Christopher R. Berry and Jacob E. Gersen, *Electoral Timing, Selective Participation, and Public Policy* (unpublished manuscript, 2010).

⁴² An exception is South Carolina. See Berry and Howell, 69 *J Polit* at 848 (cited in note 22) (noting that South Carolina “is the only state that centrally collects precinct-level election data for local school board races”).

⁴³ Hajnal, Lewis, and Louch, *Municipal Elections in California* at ix–x (cited in note 3).

been a shift in the date of the state's presidential primary designed to increase its influence in the national nominating process.⁴⁴ When the state presidential primary date changed, localities that had been holding coinciding elections suddenly found themselves holding stand-alone, nonconcurrent elections. Others that had been holding nonconcurrent elections in the spring were able to consolidate their elections with the new primary date. Because local governments generally pay the entire cost of holding nonconcurrent elections but only a fraction of the costs for concurrent elections, the change in the state primary generated an incentive for localities also to change their election dates, and many did.

There has also been a large scale change in the timing of school board elections in California. Prior to 1986, school district elections were held in odd-numbered years, while most local government and state government elections were held in even-numbered years. In the mid-1980s, the California Assembly passed AB 2605,⁴⁵ which authorized school districts to consolidate elections of board members with primary or general elections held in the county in which the district is located. The bill seems to have been overwhelmingly supported and the legislative history reveals that virtually all of the political rhetoric focused on the cost savings that would accrue from election consolidation and on the possibility of increasing voter turnout—generally described as an unqualified democratic good.⁴⁶ Because of a then-recent change allowing other special districts to shift the date of their elections, had the bill failed, school districts would have been the only special district legally required to hold elections in odd years.⁴⁷ As a result, at least one member of the legislature was concerned that school

⁴⁴ California changed its primary date from June to March in 1996. In 2004 it changed the date back to June. In 2008 it changed the date to February to coincide with "Super Tuesday."

⁴⁵ Assembly Bill No 2605, An Act to Amend Sections 1007 and 5017 of, and to Add Section 5000.5 to, the Education Code, Relating to Education, codified at Cal Educ Code § 1007 et seq (West).

⁴⁶ See, for example, Republican Analysis of AB 2605, California State Assembly, Assembly Elections and Reapportionment Committee (Aug 22, 1986) (claiming that consolidated elections will increase voter turnout and thereby reduce the power of special interests like teachers' unions); Analysis of AB 2605, California State Senate, Senate Rules Committee (July 3, 1986) (noting that the bill would lead to cost savings by allowing for the consolidation of elections); Letter from Jeffrey N. Hamilton, Superintendent, Fort Jones Union Elementary School District, to Johan Klehs, Chairperson, Assembly Elections and Reapportionment Committee (Apr 4, 1986) (conveying support for AB 2605 because it "would provide a broader base of support for the public school system"); Letter from Bob L. Blacett, District Superintendent, Modoc Joint Unified School District, to Johan Klehs, Chairperson, Assembly Elections and Reapportionment Committee (Apr 2, 1986) (supporting AB 2605 for its "cost savings throughout California"); Letter from James M. Donnelly, Director, Governmental Relations, to Johan Klehs, Chairperson, Assembly Elections and Reapportionment Committee (Feb 27, 1986) (expressing support for the bill because it "would result in cost savings and in greater voter participation").

⁴⁷ 1986 Cal Stat 188 § 1, codified at Cal Elec Code § 10404 (West).

boards would be forced to pay all of what had been shared election costs.⁴⁸ The modest debates in the press mirror these same concerns.⁴⁹ The little opposition to the bill that did emerge was generally focused on a provision of the law that required approval from the board of supervisors of the county in which the school board changing election dates was located.⁵⁰ Some administrators thought the decision should be left to the school boards alone. The State Department of Education supported the measure, however, as did many superintendents.

Following the passage of AB 2605, California experienced a widespread shift in the timing of school district elections. Whereas all school board elections were held in odd years prior to the change in the law in 1986, our estimates indicate that roughly two-thirds of the state's nearly one thousand school districts had changed their election dates to even years by 2006.

In the case of both municipalities and school districts, the changes in local election timing were spurred by changes in state policy, namely the change in the state presidential primary date in the case of municipalities and the passage of AB 2506 in the case of school districts. Because these statewide changes were exogenous from the perspective of individual local jurisdictions, we have a sort of "natural experiment" that allows us to estimate the effect of election timing on political participation and policy outcomes. Indeed, a major distinguishing feature of our analysis is that we are able to observe electoral and policy outcomes within a jurisdiction over time before and after a change in election timing.

The advantages of our *differences-in-differences* approach are significant when compared to a traditional cross-sectional analysis. A cross-sectional analysis compares outcomes from one set of jurisdictions holding even-year elections to outcomes from a different set of

⁴⁸ See Letter from Richard Robinson, Assemblyman, 72d District, to George Deukmajian, Governor, State of California (Aug 21, 1986) (noting that "without enactment of AB 2605, school districts could . . . be left to pay the full costs for conducting the expensive, low-turnout elections in the off years").

⁴⁹ See, for example, Karen Maeshiro, *Big Changes for Schools? Larger Classes, Middle School Reorganization Mulled*, LA Daily News 1 (Feb 14, 2005) ("In other cost-cutting moves, the board at its Feb. 1 meeting approved petitioning the Los Angeles County Board of Supervisors to move the district's school board elections from odd-numbered years to even-numbered years so they would coincide with general elections and save the district between \$40,000 and \$60,000."); Dee Anne Traitel, *Chula Vista School Trustees Elect to Shift Vote, Save Money*, San Diego Union-Trib B6 (Apr 24, 1985) ("In an effort to cut costs, trustees of the Chula Vista School District have decided to hold school-board elections on the same day as statewide elections. Last night's resolution will save the district half of the current \$30,000 cost per election.").

⁵⁰ See Letter from Karen L. Yelverton, Senior Legislative Advocate, California School Boards Association, to Richard Robinson, Member of the Assembly (Mar 10, 1986) (committing support for the bill "if amendments are taken to eliminate the County Board of Supervisors' approval of school board decisions").

jurisdictions holding odd-year elections. The differences between the two types of jurisdictions may be attributable to the effect of election timing, but the differences may also be due to other factors that differ systematically between jurisdictions holding even- versus odd-year elections. For example, according to our data, California school districts that hold elections in even years are smaller and less urban than districts that hold elections in odd years, have a lower proportion of students that are minorities, and have a lower poverty rate. Differences in voter participation and policy between even- and odd-year districts could be due to election timing, but the differences could also be due to other district characteristics that are systematically correlated with the timing of their elections. While it is, of course, possible to control for measurable district attributes in a statistical analysis, it is not possible to control for the *unobservable* aspects of the districts that are also likely to be correlated with election timing and voter participation (for example political interest or social capital). The natural experiment generated by statewide policy changes in California offers a clear opportunity for more rigorous analysis, allowing us to examine outcomes within the same district before and after a change in election timing. As long as other attributes of the district do not change before and after the shift in election timing, we can be more confident that the observed differences in outcomes are the result of the electoral regime.

A. Timing and Turnout

To analyze the relationship between election timing and voter participation, we draw on the California Elections Data Archive (CEDA) maintained by the Center for California Studies at Sacramento State University. The archive contains data on candidates, ballot designations, and vote totals for all county, municipal, school district, and community college elections held between 1996 and 2006. In total, the data cover more than 11,000 local government elections. The analysis herein focuses on the 4,900 school district and 3,300 municipal elections that comprise the bulk of the data.⁵¹

The CEDA contains the number of votes cast for each candidate in each election. Based on this information, we computed voter turnout as the total number of votes cast in the election divided by the voting age population in the jurisdiction.⁵² Summary patterns for

⁵¹ The remaining three thousand elections consist of a smattering of community college, county, and other local offices that had relatively few elections each or could not be matched to a specific geographic area.

⁵² Note that our definition of turnout can differ for two elections held on the same day as a result of ballot rolloff.

school district elections are shown in Table 1.⁵³ Roughly two-thirds of school district elections were held in even years. Elections held in odd years garnered less than half the level of voter participation as those held in even years, and this differential was evident throughout all the years studied.

Comparable turnout results for municipal elections are shown in Table 2. Four in five municipal elections occurred in even years. As was the case with school districts, turnout in municipal elections is roughly 20 percentage points lower in odd years. Figure 1 demonstrates the sawtooth pattern of voter participation across even and odd years that is evident in both municipal and school elections. Presidential election years also have even higher turnout than other even-numbered years (consistent with prior research),⁵⁴ while odd years show uniformly lower voter participation. Finally, turnout in municipal elections is between 5 and 15 percentage points higher than in school district elections, even when the two are held at the same time, likely as a result of ballot rolloff or abstention.

Whereas school district elections are held almost exclusively in November, about 20 percent of municipal elections are held in months other than November, primarily in March, April, and June. That is, electoral timing varies both across years and within years. As shown in Table 2, turnout is higher in November municipal elections in both even and odd years than in elections held during other times of the year. The highest level of voter participation is seen in November of even years, coincident with major state and national races, while the lowest participation occurs in months other than November in odd years, where median turnout drops to 10 percent of the voting age population.

While Tables 1 and 2 present only simple descriptive statistics, regression analyses that control for population size and demographic characteristics thought to influence voter turnout produce the same conclusions.⁵⁵ More notably, the results hold when jurisdiction-level fixed effects are introduced. That is, within the same jurisdiction over time, turnout in school board elections is approximately 22 percentage

⁵³ Because 94 percent of school district elections took place in November, we excluded other months from our analysis.

⁵⁴ See note 20.

⁵⁵ See Berry and Gersen, *Electoral Timing* (cited in note 41). Specifically, we control for population size, as well as the racial and age composition of the jurisdiction. In addition, we control for the homeownership rate and the fraction of families with children, which are expected to be especially important determinants of participation in local elections. We emphasize that these variables measure the aggregate attributes of the population in the jurisdictions, not the attributes of individual voters, and therefore the usual cautions regarding the ecological fallacy apply. See Gary King, *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data* 7, 16–17 (Princeton 1997).

points higher in even years than in odd years; turnout in municipal elections is approximately 17 percentage points higher in even years than in odd years. In other words, turnout for municipal and school district elections roughly doubles when a jurisdiction changes its election date from an odd to an even year.

These results generalize prior cross-sectional work showing that turnout in California elections is higher among jurisdictions holding elections in even years,⁵⁶ as well as work showing that turnout in school board elections in Riverside County increased significantly after the shift to on-cycle election years in California.⁵⁷

B. Timing and Policy

The observed relationship between election timing and voter participation in school and municipal elections is unsurprising and consistent with the idea that turnout for low-profile local elections is driven to a large degree by the coincidence of major state and national races. However, to say that the timing of local government elections affects turnout is not necessarily to say that timing affects policy. Even if voter turnout drops from 40 percent of eligible voters to 12 percent, if the preferences of the median voter in the first scenario mirror the preferences of the median voter in the second, the shift in turnout would have no impact on the electoral outcome or, by implication, subsequently enacted public policy. Indeed, if the same electoral outcome can be produced with lower political participation costs, lower turnout might even be considered a benefit.

The selective participation thesis, however, suggests that the policy preferences of voters in the low-turnout scenario will be significantly different from those in the high-turnout scenario. Those with the most at stake in the election will be more likely to participate when the costs rise than citizens with less at stake. If so, officials elected in off-cycle elections may look substantially different from politicians elected in on-cycle elections, and the resulting public policy should differ as well. To be clear, the resulting policy may be better or worse on the merits. For instance, parents of students in public schools have more at stake than adults without children and may also produce desirable changes in policy when they dominate school district elections. The central empirical question for the moment is whether, in fact, policy differs across the two electoral timing regimes.

⁵⁶ See, for example, Hajnal and Lewis, 38 *Urban Aff Rev* at 656 (cited in note 25).

⁵⁷ Townley, Sweeney, and Schmieder, 29 *Urban Educ* at 56–61 (cited in note 25).

Prior work has shown that the timing of votes on public bond measures for education affects the probability of passage.⁵⁸ As discussed above, however, ascertaining the impact of timing on policy outcomes is generally a challenge because only a single timing regime and a single policy outcome are observed in any given jurisdiction. There is obviously useful information in the cross-sectional estimates, but to make stronger claims, one would like to observe policy in the same jurisdiction under different legal timing regimes. This is precisely what our research design allows.

We begin by focusing on school districts because of the rich data on local policies and student outcomes that are readily available. Indeed, there are literally dozens of substantive education policies that might shift because of selective participation effects related to election timing. If parents of enrolled children dominate off-cycle elections, test scores might increase, class size might be reduced, and so forth. If unions dominate school board elections, employee salaries might increase, tenure standards might be eased, and working conditions might become more favorable along other dimensions. If anti-tax groups dominate the election, overall educational funding might drop (depending on the state-financing scheme). Our ongoing research investigates these policy outcomes and others.

For illustrative purposes, however, we discuss some preliminary findings on teacher salaries and student test scores from a companion working paper.⁵⁹ Teacher salaries represent a natural outcome by which to evaluate our theoretical prediction that special interests exert disproportionate influence when participation costs rise. First, there is already clear evidence of selective participation by teachers' union members in school district elections.⁶⁰ Second, higher salaries are a universal and unambiguous goal for teachers and their unions. Third, teacher salaries follow a rigid pay scale based on qualifications and experience, and comprehensive data on the pay scales are available from the California Department of Education (CDE).⁶¹ On the

⁵⁸ Dunne, Reed, and Wilbanks, 93 Pub Choice at 107–10 (cited in note 26) (showing that public school officials can increase the likelihood of success of school bond measures by scheduling the election during the school year because it lowers the cost of voting for those most likely to vote in favor of the measure).

⁵⁹ Berry and Gersen, *Electoral Timing* (cited in note 41).

⁶⁰ Terry M. Moe, *Political Control and the Power of the Agent*, 22 J L, Econ, & Org 1, 18 (2006) (finding that in a school district election in Charter Oak, California, overall voter participation was 7 percent while teacher participation was 46 percent).

⁶¹ See California Department of Education, *Selected Certified Salaries and Related Statistics 1999–2000*, online at <http://www.cde.ca.gov/ds/fd/cs/documents/j90total9900.pdf> (visited Oct 21, 2009) (collecting detailed information about teacher salaries including lowest, average, and highest salaries from 85 percent of the state's school districts).

other side of the ledger, student test scores represent one natural outcome by which to evaluate the argument that the expertise of highly informed voters will lead to better performance by boards that are elected in a low-turnout election. By comparison, we are not aware of comparable data available for county or municipal employee salaries or obvious performance outcomes for these governments. Thus, while salaries and test scores represent just two policy outcomes likely to be influenced by selective participation, they are particularly direct, easily measurable, and unambiguous outcomes.

We obtained the certificated salary and benefit schedule (form J-90) from the CDE for each school district and each year from 1999 through 2005.⁶² To identify teachers with the same qualifications and experience across districts, we focus on those at step ten in the salary schedule (BA degree plus sixty hours of continuing education).⁶³ The data show that teachers working in districts where elections are held in odd years earn roughly \$1,700 more than similarly qualified teachers in districts with even-year elections, consistent with the selective participation prediction. With an average step ten salary of roughly \$54,000, the even-year salary differential represents roughly a 3 percent reduction.⁶⁴

These figures are essentially cross-sectional comparisons of salaries in all-even-year districts with salaries in all-odd-year districts, subject to all the caveats about cross-sectional analysis noted above. There are also eighteen districts that changed their election timing from odd to even years over the course of the study period. Focusing just on data from these schedule-switching districts, we can compare teacher salaries before and after the change in election timing, essentially asking whether salaries go down (or up) *in the same district* after it changes its elections from odd to even years. Even with only 108 observations from 18 districts, the estimated effect of election timing remains highly significant statistically, although somewhat smaller than in the cross-sectional comparison. Teacher salaries go down with-

⁶² No data is available from years prior to 1999. The data are obtained by CDE from local school districts through a survey. Although participation in the survey is voluntary, the response rate was 84 percent of districts representing 98 percent of the state's students in the 2006 survey. The responses are rigorously checked by CDE and reconfirmed with the districts before publication. See California Department of Education, *Selected Certificated Salaries and Related Statistics 2005-06* (Dec 2006), online at <http://www.cde.ca.gov/ds/fd/cs> (visited Jan 3, 2010).

⁶³ Focusing on the starting salary, the highest salary, or the average salary yields comparable results to those discussed below.

⁶⁴ In other work, we control for a variety of district level covariates that could influence teacher salaries. The main results remain unchanged. Controlling for district level covariates reduces the effect slightly to \$1,400. See Berry and Gersen, *Electoral Timing* (cited in note 41).

in a district by roughly \$1,200, or 2 percent relative to the state average, after the switch from odd-year to even-year elections.⁶⁵

The effect of election timing on teacher salaries might be taken as evidence that special interests exert a nefarious influence in low-turnout elections. One possible reading of the data is that teachers dominate school board elections held in odd-years and subsequently are able to extract better deals during negotiations. On the other hand, a more positive selective participation gloss might be that parents or pro-education interests more generally dominate odd-year low-turnout school board elections. Such interests, possibly including unions, might prefer higher teacher salaries in the hopes of attracting better teachers and thereby improving educational outcomes for children. As an early attempt to disentangle these effects, we have compared standardized test results on the state's Academic Performance Index between and within districts in the same way that we did for teacher salaries. Although our work is ongoing, no findings so far establish a robust link between the timing of school board elections and student achievement as measured by standardized test scores.

* * *

The empirical analysis then is largely supportive of our thesis about electoral timing. Off-cycle elections generate systematically lower turnout and shifts in electoral timing produce identifiable shifts in voter participation and ultimately changes in public policy. Timing regimes that make it more costly for voters to participate in a given local government election produce measurable policy shifts in favor of special interests. These timing effects are detectable not just across jurisdictions, but even within jurisdictions where the timing regime has changed.⁶⁶

IV. LEGAL REGIMES

To this point, the Article has argued that the timing of local government elections has significant implications for local democratic process. Electoral timing significantly influences voter turnout and generates identifiable differences in substantive policy outcomes. By now, constitutional lawyers may be quick to point out that the US Constitution directly addresses this institutional design problem for

⁶⁵ These estimates come from a model including district and year fixed effects, as well as time-varying district level covariates. For complete results, see id.

⁶⁶ While our analysis is focused exclusively on California, an independent analysis finds comparable results using cross-sectional data from eight states. See Sarah F. Anzia, *Election Timing and the Electoral Influence of Interest Groups* (unpublished manuscript, Oct 3, 2009), online at http://www.stanford.edu/~sanzia/Election_Timing_10_3_09.pdf (visited Feb 4, 2010).

federal elections: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."⁶⁷ Article I, § 4, clause 1, colloquially known as the Times, Places, and Manner Clause, not only prescribes a careful balance of federal and state control of elections for federal offices, but also groups the timing of elections together with manner of holding elections.

Neither of these facts should be startling. The Founders recognized that the power to control elections for federal office is the power to destroy the federal legislature. Thus, while the Constitution allocates primary regulatory authority over elections to the states as a default, it also creates clear authority for the federal legislature to opt out of a state electoral scheme. Although the early debates contain many overlapping themes, one of the main points of disagreement was how to balance the fact that states would know how best to manage elections, the realization that the authority to regulate contains the power to undermine, and the concern that granting undisputed authority to set the terms of elections to the federal legislature would generate a risk of self-dealing.⁶⁸

Throughout these debates, one finds a candid acknowledgment that the ability to control the manner, place, *or* time of an election constitutes an ability to influence the election's outcome. As for why the Constitution does not give this authority to the federal legislature as a default, the Founding debates reveal an ever-present concern about the risk of self-dealing and self-preservation. Surprise elections about which only one group knows, or elections held in a remote location to which most citizens do not have access, allow those in charge to control who votes.

As already noted, our goal in this Article is not to prescribe an optimal legal regime for local government election timing. This Part does, however, survey some of the most common legal regimes and identify relevant tradeoffs that would warrant consideration in any serious normative analysis.

⁶⁷ US Const Art I, § 4, cl 1.

⁶⁸ See Federalist 60–61 (Hamilton), in *The Federalist* 403, 403–04 (Wesleyan 1961) (Jacob E. Cooke, ed) (arguing that giving the federal government the full power to control elections would allow it to guarantee the election of "some favourite class of men" by "confining the places of election to particular districts"). See also Philip B. Kurland and Ralph Lerner, eds, 1 *The Founders' Constitution* 248–79 (Chicago 1987) (assembling excerpts from early debates).

A. Legal Variation

Even a cursory glance at the state laws regulating electoral timing in local government reveals enormous heterogeneity. Most of the legal regimes can be split along two dimensions. First, some laws require what might be described as piggybacking—coordinating most local government elections with other local, state, and federal elections—while others allow or mandate fragmentation—holding individual elections or small clusters of elections on different days.⁶⁹ Nassau County, New York, constitutes an extreme case of fragmentation: there are special district elections on at least twenty-four different days of the year and at least one each in eleven of the twelve months of the year.⁷⁰ Second, state laws differ with respect to which institution gets to make the decision about when to have elections. Recall that California school districts were allowed to change their election dates but only subject to the approval of another local government institution.⁷¹ Other localities are given near complete discretion to decide when local elections will be held. For example, Alaska provides complete freedom for municipalities to select their own election times, providing that they enact a measure when diverging from the default coordinated date.⁷²

Other states regulate the timing of local government elections rigidly, although the regimes differ significantly as to the degree of parsimony. At one extreme, municipalities in Connecticut are given two options for their biennial elections—the first Monday of May or the first Tuesday after the first Monday of November in odd-numbered years.⁷³ At the other extreme, the timing of Louisiana's elections are strictly mandated but subject to a near-byzantine timing scheme. A number of municipal and ward officers are elected on the same date as Congress:⁷⁴

⁶⁹ See notes 72–79.

⁷⁰ See Souzzi, *Special District Election Date Study* at *2 (cited in note 6).

⁷¹ See text accompanying note 50.

⁷² Alaska Stat Ann § 29.26.040 (Lexis) (requiring that the “date of a regular election is the first Tuesday of October annually, unless a different date or interval of years is provided by ordinance”). The city of Anchorage, for example, holds its municipal elections in April. See Municipality of Anchorage, *Municipality Elections Home Page*, online at <http://www.muni.org/departments/assembly/clerk/elections/pages/default.aspx> (visited Oct 21, 2009).

⁷³ Conn Gen Stat Ann § 9-164 (West). These municipal elections include the election of first selectmen and selectmen. Conn Gen Stat Ann § 9-188 (West). The board of selectmen has more discretion when deciding when special elections will be held when there are vacancies or a newly created office, but still must follow a number of restrictions and notice requirements. Conn Gen Stat Ann § 9-164(b) (West). Towns are required to have an annual town meeting, but special town meetings can also be convened by the selectmen or twenty voters. Conn Gen Stat Ann § 7-1 (West).

⁷⁴ See La Rev Stat Ann § 18:402 (West).

Primary elections for municipal and ward officers who are not elected at the same time as the governor or members of congress shall be held on the first Saturday in April of an election year, or on the second Saturday in February of an election year, if the statewide presidential preference primary election is scheduled on the second Saturday in February of the presidential election year, or on the third Saturday in February of an election year, if the statewide presidential preference primary election is scheduled on the third Saturday in February of the presidential election year.⁷⁵

The code continues:

General elections for municipal and ward officers who are not elected at the same time as the governor or members of congress shall be held on the fourth Saturday after the first Saturday in April of an election year unless the primary election for such officers is held on the second or third Saturday in February; in such case the general election shall be held on the fourth Saturday after the second or third Saturday in February, as the case may be, of an election year.⁷⁶

Most states occupy intermediate locations on this continuum. A single provision in Montana law makes clear that general elections must be held on the first Tuesday after the first Monday of November in even-numbered years to vote on ballot issues and “to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers.”⁷⁷ On election days in odd-numbered years, the state elects municipal officers, officers of political subdivisions wholly within one county, and other specified officers.⁷⁸

⁷⁵ La Rev Stat Ann § 18:402(C)(1) (West).

⁷⁶ La Rev Stat Ann § 18:402(C)(2) (West). However, Louisiana has different rules regarding the timing of elections in parishes containing a municipality with a population of at least 475,000, a provision that seems meant to apply only to Orleans Parish. See Louisiana Secretary of State, *2010 Elections* (June 10, 2009), online at <http://www.sos.louisiana.gov/Portals/0/elections/pdf/Copyofelections10061009.pdf> (visited Oct 21, 2009); Louisiana Secretary of State, *2010 Elections: Orleans Parish Only*, online at <http://www.sos.louisiana.gov/Portals/0/elections/pdf/Calendar2010Elections-N.O.pdf> (visited Oct 21, 2009); Louisiana Secretary of State, *2010 Elections: Election Schedule for All Parishes except Orleans Parish*, online at <http://www.sos.louisiana.gov/Portals/0/elections/pdf/Calendar%202010%20Elections.pdf> (visited Oct 12, 2009). For those “parishes,” general elections “shall be held on the fourth Saturday after the first Saturday in February of an election year.” La Rev Stat Ann § 18:402(D)(2) (West). Interestingly, no city in Orleans Parish has a population even close to 475,000 now. Rules regarding special elections, while similarly splitting parishes with and without populous cities, are also strictly prescribed. La Rev Stat Ann § 18:402(E) (West).

⁷⁷ Mont Code Ann § 13-1-104(1)(a).

⁷⁸ Mont Code Ann § 13-1-104(2).

As illustrated by the data from Nassau County, local governments in New York are allowed significant latitude regarding elections.⁷⁹

B. Normative Gestures

If this Article's theoretical account of timing is correct, then some back-of-the-envelope analysis regarding the right way to regulate the timing of elections is in order, even if we can only identify some of the relevant tradeoffs and their respective magnitudes. Our goal, therefore, is more to clear some conceptual underbrush than to propose concrete policy reforms.

Low levels of voter turnout are generally lamented in democratic theory.⁸⁰ It is tempting, therefore, to think that coordinated or centralized election regimes in which all local elections are held on the same date on the same ballot should be strictly preferred. Moreover, to the extent that there are any economies of scale for elections—as there almost surely are—a single annual election for all local government officials also helps economize on the financial costs of holding elections. Temporal fragmentation drives turnout down and is likely more costly in a strict administrative sense.

The reason the pure coordination regime falters as a normative matter is that turnout in the aggregate is imperfectly correlated with per-ballot-item voting. Even if one cared only about the quantity of voter participation rather than the quality of voter participation, it is this latter statistic that warrants emphasis. Moreover, the quality of electoral decisions should be a joint function of the number of voters and the quality of individual judgments. Individual voters may pay less attention to a given issue in an on-cycle election, when it must be eva-

⁷⁹ “The general village election shall be held on the third Tuesday in March except in any village which presently elects, or hereafter adopts a proposition to elect, its officers on a date other than the third Tuesday in March.” NY Elec Law § 15-104(1)(a) (McKinney). Elections for “town officers and for the consideration of such questions as may be proposed by the town board or the duly qualified electors, pursuant to the provisions of this chapter, shall be held on the Tuesday next succeeding the first Monday in November of every odd-numbered year.” NY Town Law § 80 (McKinney). However, Broome County is allowed to hold its election on the Tuesday after the first Monday in November of an even-numbered year. NY Town Law § 86 (McKinney). The disorganization of elections in Nassau County is a result of the county continuing to have special improvement district commissioners. Though constrained by notice and a few other requirements, special improvement district commissioners were allowed to choose the date of their elections. NY Town Law § 212 (McKinney). An effort to get rid of the office and give its authority to the town boards led to NY Town Law § 57-a (McKinney), which required that the town board vote by at least three-fourths to continue the office or that the voters in the district hold a special election to keep the office. Fire district officers are elected on the second Tuesday in December, with a few specified exceptions. NY Town Law § 175 (McKinney).

⁸⁰ See, for example, Paul R. Abramson and John H. Aldrich, *The Decline of Electoral Participation in America*, 76 Am Polit Sci Rev 502, 502 (1982) (noting the danger of electoral nonparticipation).

luated alongside many other issues, than they would have given to the same issue were it considered alone in an off-cycle election. So long as citizens have a limited stock of political attention in any given time period, spreading elections across time periods may result in an increase in per-issue or per-election citizen attention, even if aggregate turnout is lower.

A robust finding in the study of elections is that long ballots produce nontrivial rolloff effects: issues near the top of the ballot are much less likely to result in abstention than issues at the end of the ballot.⁸¹ A pure coordination regime would inevitably generate longer ballots, increase rolloff, and almost certainly reduce the degree of attention paid to the less prominent races on the ballot. Thus, while perfect coordination of local government elections is intuitively appealing on turnout grounds, it is unlikely that these regimes generate the best mix of turnout, attention, and abstention. In theory at least, such rolloff could produce outcomes that are identical to the fragmented electoral outcomes if special interests always vote in their most preferred races and general interests abstain (in the single-ballot regime) from the same races that they do not vote for in the off-timing or fragmented regime. In practice, the empirical results suggest otherwise.

If the pure coordination solution is unlikely to be optimal, the other corner solution of complete separation seems undesirable as well. Holding local government elections in eleven months of the year may give citizens the opportunity to carefully consider each individual vote, but the costs of going to the polls with such frequency are almost certain to drive down political participation among all but a small subset of the community. Again, this could produce welfare increases if this subset cares a great deal more than the rest of the jurisdiction or if this subset has greater expertise than the rest of the population. However, it is also possible that this subset will take the opportunity to extract resources for itself at the expense of the rest of the jurisdiction.

To say that neither corner solution seems optimal, however, is not to say all that much. And the fact that we cannot identify the right amount of fragmentation or clustering with any degree of accuracy might be taken as discouraging for institutional designers. By the same token, if the political institution that controls election timing has the right incentives to balance the above considerations, there might be no reason for concern. State laws governing electoral timing often vest significant discretion in the hands of local institutions; if the exercise

⁸¹ Howard A. Scarrow, *Ballot Format in Plurality Partisan Elections*, in Bernard Grofman and Arend Lijphart, *Electoral Laws and Their Political Consequences* 242, 243–46 (Agathon 1986) (discussing literature).

of that discretion is subject to desirable political pressures, perhaps the timing of elections is likely to be about right.

Unfortunately, if the analogy between redistricting and electoral timing is right, then there is every reason to think that vesting discretion about timing in the same institutions subject to those elections produces a genuine risk of self-dealing. The expansive redistricting debates seem to have left unresolved the best way to manage this risk. Nevertheless, if one is of the view that state legislatures cannot be trusted to draw their own electoral districts in a fair way, then it might sensibly follow that local government institutions ought not be given the authority to control the timing of their own elections.

There is, however, also a deeper problem for normative analysis of election regimes—a problem not just for election timing, but also for normative evaluation of political institutions more generally. To illustrate, we have argued that, empirically, election timing affects the costs of political participation; when election timing is fragmented, voters selectively participate, turnout changes, and so too does policy. An easy and crude way to characterize this result is that fragmented election timing produces minoritarian (special interest) policy. In a system that prizes majoritarianism, it is easy to think any institutional arrangement that produces minoritarian policy is undesirable (setting aside our earlier discussion of expertise and preference intensity). Calling one regime majoritarian and the other minoritarian, however, requires identifying the appropriate baseline. After all, actual voters in any election often represent a minority of the overall voting-age population (that is, potential voters). Because every bundle of electoral institutions generates participation costs, actual voters are always a subset of the universe of potential voters.

The actual voters in a coordinated election scheme—all elections on the same ballot—will be a subset of potential voters. The actual voters in a fragmented timing regime will be a subset of potential voters too. In either case, the actual median voter is likely to differ from the median citizen. The choice then is really between the electorate produced by the single ballot (coordinated timing) and the electorate produced by many ballots (fragmented timing). To be clear, the median voter should differ across these two regimes, but it is extremely difficult to say which regime produces outcomes that adhere most closely to some hypothetical potential majoritarian ideal.

A natural starting point is the median voter of the pool of all qualified voters, that is the median citizen. However, on sensible democratic theories the views of those who choose not to vote in a given election are not the right benchmark. And that is precisely the dynamic at work when voters choose not to participate in oddly timed local elections. Alternatively, any timing regime (or other electoral regime)

might be described as more or less minoritarian (majoritarian) than the status quo, but there is no reason to think the status quo is the right baseline for comparison either—even assuming that majoritarianism is the appropriate benchmark for democratic theory.

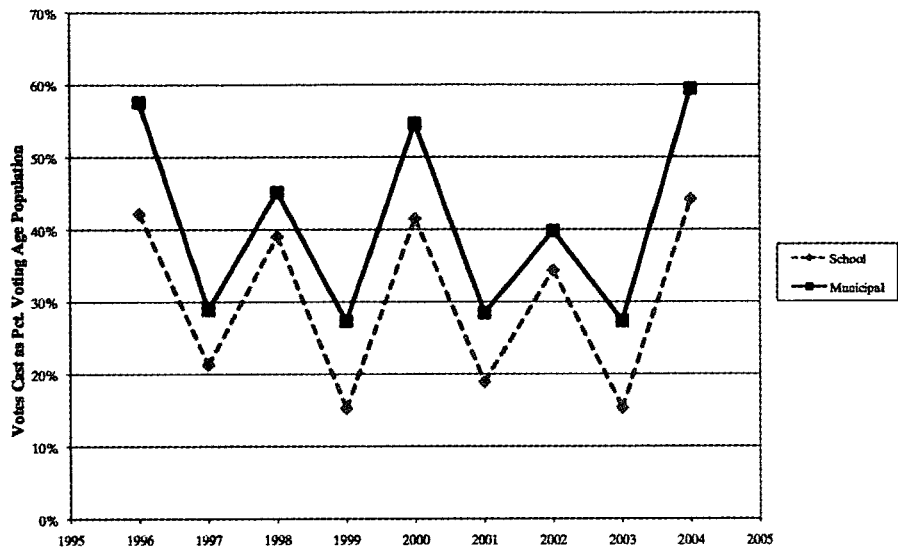
If one prefers to avoid the majoritarian position as a normative benchmark, theoretically one could advance a sort of crude welfarist analysis. Unfortunately, the normative property of timing regimes as a general matter is no easier here. The basic problem is that as participation costs rise, it is the groups most affected by an election that participate. Such special interests are, by definition, parties with the most to win or lose in the process. The remainder of the community (nonvoters) cares less about these elections, while the participating groups care a great deal. Thus, it is entirely possible that allowing special interests to control these elections would be social welfare-enhancing, which would suggest greater fragmentation with low turnout in local government elections would actually be better from a welfarist perspective.⁸² So long as the rest of the population cares little and the minority cares a lot, allowing groups with the most at stake to determine electoral outcomes may enhance rather than reduce welfare. The difficulty is that the opposite conclusion is entirely plausible as well, particularly if the minority can use its electoral influence to impose costs on the majority. All of which suggests that a good deal of modesty is in order with respect to any claims about the right or best electoral timing regime.

CONCLUSION

This Article takes as its target the timing of local government elections. Notwithstanding the enormous heterogeneity with respect to the timing of local government elections in the United States, electoral timing has been underemphasized in the literature. Conceptually, we seek to locate the strategic manipulation of electoral timing within the broader toolkit of local government. Because electoral timing produces participation costs, different timing regimes produce different levels and types of voting in local government elections. By taking advantage of a change in the law regarding electoral timing, this Article documents that different timing regimes produce drastically different turnout rates across a wide range of local government elections and systematically different policy outcomes.

⁸² This is a direct parallel to the welfare properties of logrolls in legislatures. See Thomas Stratmann, *Logrolling*, in Charles K. Rowley and Friedrich Schneider, eds, *The Encyclopedia of Public Choice* 372, 372 (Kluwer 2008) (noting that logrolling may produce a collective choice closer to the social optimal than sincere voting would because vote trading accounts for intensities of preferences).

FIGURE 1: VOTER TURNOUT



Source: *California Elections Data Archive* (Center for California Studies, Sacramento State University).

TABLE 1: SUMMARY OF SCHOOL BOARD ELECTION TURNOUT

Year	Average Turnout	Median Turnout	Number of Elections
1996	42%	38%	577
1997	21%	15%	332
1998	39%	31%	566
1999	15%	12%	326
2000	41%	36%	519
2001	19%	14%	334
2002	34%	26%	594
2003	15%	10%	312
2004	44%	37%	545
All even years	40%	33%	2801
All odd years	18%	13%	1304
All years	33%	22%	4105

Source: Authors' calculations based on data from *California Elections Data Archive* (Center for California Studies, Sacramento State University).

TABLE 2: SUMMARY OF MUNICIPAL ELECTION TURNOUT

Year	Average Turnout	Median Turnout	Number of Elections
1996	58%	48%	434
1997	29%	24%	150
1998	45%	39%	443
1999	27%	22%	149
2000	55%	48%	436
2001	28%	23%	132
2002	40%	34%	464
2003	27%	23%	116
2004	59%	52%	461
All even years	51%	42%	2238
All odd years	28%	23%	547
November, even years	55%	48%	1859
Other months, even years	32%	19%	379
November, odd years	32%	29%	402
Other months, odd years	16%	10%	145
All elections	47%	38%	2785

Source: Authors' calculations based on data from *California Elections Data Archive* (Center for California Studies, Sacramento State University).